

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO. 1:06-CR-0138</b>
	:	
v.	:	<b>(Judge Conner)</b>
	:	
<b>ROBERT RAYMOND HOWARD, SR.,</b>	:	

**ORDER**

AND NOW, this 29th day of June, 2007, upon consideration of defendant's motion (Doc. 49) to dismiss Counts VII and VIII of the superseding indictment,<sup>1</sup> arguing that receiving a handgun in exchange for drugs is not "use" within the meaning of 18 U.S.C. § 924(c)(1)(A), and it appearing that the U.S. Court of Appeals for the Third Circuit concluded that exchanging drugs for firearms constitutes "use" under 18 U.S.C. § 924(c)(1)(A), see United States v. Sumler, 294 F.3d 579, 582-83 (3d Cir. 2002),<sup>2</sup> it is hereby ORDERED that the motion (Doc. 49) to dismiss Counts VII and VIII of the superseding indictment is DENIED.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge

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<sup>1</sup> Counts VII and VIII of the superseding indictment charge defendant with exchanging crack cocaine for handguns, in violation of 18 U.S.C. § 924(c)(1).

<sup>2</sup> Defendant recognizes this controlling Third Circuit case, but argues that there is a split of authority among the circuits and that the Supreme Court has granted certiorari in Watson v. United States, No. 06-571, to resolve this split. (See Doc. 50 at 2.) Absent an existing, contrary holding by the Supreme Court, however, the court is bound by the Third Circuit's decision in Sumler.